

Assembly Bill No. 55

CHAPTER 1015

An act to amend Sections 1502 and 2117 of, and to add Section 1502.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 55, Shelley. Corporations: disclosure statements.

Existing law, the General Corporation Law, requires a domestic corporation and a foreign corporation to file statements with the Secretary of State disclosing specified information concerning its operation biennially.

This bill would require the statement to instead be filed annually. The bill would specify additional information that a publicly traded corporation is required to include in these statements. The bill would make the information contained in the statements open to public inspection and would require the Secretary of State, prior to December 31, 2004, to make this information available on an online database. The bill would also require a corporation to pay a \$5 disclosure fee when filing the statement in addition to any other fees required. The bill would specify the use of this fee, including the deposit of one-half of the fee revenue into the Victims of Corporate Fraud Compensation Fund, which would be established by the bill. The bill would require the Secretary of State to administer the fund and to adopt regulations regarding its administration and the eligibility of victims to receive compensation.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Corporate Disclosure Act.

SEC. 2. Section 1502 of the Corporations Code is amended to read:

1502. (a) (1) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(A) The names and complete business or residence addresses of its incumbent directors.

(B) The number of vacancies on the board, if any.

(C) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(D) The street address of its principal executive office.

(E) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.

(F) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(2) In addition to all of the information required by paragraph (1), every publicly traded company shall also include the following information in the statement:

(A) The name of the independent auditor used by the corporation and a description of any other services, if any, performed for the corporation during the previous 24 months by the independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(B) The date of the last report prepared for the corporation by the independent auditor. The corporation shall attach a copy of the report to the statement.

(C) The annual compensation paid to each member of the board of directors and each executive officer, including the number of any shares or options for shares that were not available to other employees of the corporation.

(D) A description of any loans made to a member of the board of directors by the corporation at a preferential loan rate during the previous 24 months, including the amount and terms of the loans.

(E) A statement indicating whether any bankruptcy was filed by the corporation, its executive officers, or members of the board of directors within the previous 10 years.

(F) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years.

(G) A statement indicating whether the corporation violated any federal security laws or any security or banking provision of California law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory organization in which a judgment over ten thousand dollars (\$10,000) was entered.

(3) For purposes of this section, the following definitions apply:

(A) “Publicly traded company” means a company with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and



asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.

(B) “Executive officer” means the five most highly compensated officers of the company, excluding any officer who is also a member of the board of directors.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person’s complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State’s office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the corporation according to the records of the Secretary of State. The failure of the corporation to receive the form is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.



(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, no later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(i) In addition to any other fees required, a corporation shall pay a five-dollar (\$5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (h), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

SEC. 3. Section 1502.5 is added to the Corporations Code, to read:

1502.5. The Victims of Corporate Fraud Compensation Fund is hereby established in the State Treasury. The fund shall be administered by the Secretary of State who shall adopt regulations regarding the administration of the fund and the eligibility of victims to receive compensation from the fund. The revenue in the fund shall be used for the sole purpose of providing restitution to the victims of a corporate fraud.

SEC. 4. Section 2117 of the Corporations Code is amended to read:

2117. (a) (1) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing:

(A) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(B) The street address of its principal executive office.

(C) The street address of its principal business office in this state, if any.

(D) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(2) In addition to all of the information required by paragraph (1) every publicly traded company shall also include the following information in the statement:

(A) The name of the independent auditor used by the corporation and a description of any other services, if any, performed for the corporation during the previous 24 months by the independent auditor, by its parent



corporation, or by an agent, subsidiary, corporate partner, or corporate affiliate of the independent auditor or its parent corporation.

(B) The date of the last report prepared for the corporation by the independent auditor. The corporation shall attach a copy of the report to the statement.

(C) The annual compensation paid to each member of the board of directors and each executive officer, including the number of any shares or options for shares that were not available to other employees of the corporation.

(D) A description of any loans made to a member of the board of directors by the corporation at a preferential loan rate during the previous 24 months, including the amount and terms of the loans.

(E) A statement indicating whether any bankruptcy was filed by the corporation, its executive officers, or members of the board of directors within the previous 10 years.

(F) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years.

(G) A statement indicating whether the corporation violated any federal security laws or any banking or security provision of California law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory agency in which a judgment over ten thousand dollars (\$10,000) was entered.

If the executive officers of the corporation use other titles, the statement shall include the officers performing comparable duties under other titles. If the corporation has no executive officers, or has no executive officers who are natural persons, the statement shall include the names of natural persons performing comparable duties for the corporation pursuant to a management contract or other arrangement.

(3) For purposes of this section, the following definitions apply:

(4) “Publicly traded company” means a company with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.

(B) “Executive officer” means the five most highly compensated officers of the company, excluding any officer that is also a member of the board of directors.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not



terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement and designation required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, no later than December 31, 2004, shall provide access to all information contained in the statement and designation by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement and designation required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section except that "articles" shall mean the filing pursuant to Section 2105.

